

Date JUL 18 1986

Fee \$ 10.00

IEC Washington, D.C.

15001  
RECORDATION NO. \_\_\_\_\_ Filed 1425

JUL 18 1986 -3 20 PM

INTERSTATE COMMERCE COMMISSION

July 15, 1986

**Whirlpool**  
**Leasing**  
services, inc.

17177 N. Laurel Park Drive, Suite 233, Livonia, MI 48152  
(313) 464-9100

15001  
RECORDATION NO. \_\_\_\_\_ Filed 1425

JUL 18 1986 -3 20 PM

INTERSTATE COMMERCE COMMISSION

Ms. Noreta McGee, Acting Secretary  
Interstate Commerce Commission  
12 Constitution Avenue  
Washington, D.C. 20423

100 OFFICE OF  
THE SECRETARY  
JUL 18 3 12 PM '86  
MOTOR OPERATING UNIT

Dear Secretary:

I have enclosed an original and two copies of the documents, described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

These documents are a lease and lease declaration, with the lease document dated May 20, 1986, and the lease declaration document dated July 2, 1986.

The names and addresses of the parties to the documents are as follows:

Lessor: Whirlpool Leasing Services, Inc.  
17177 N. Laurel Park Dr., Suite 233  
Livonia, Michigan 48152

Lessee: The Denver & Rio Grande Western Railroad Company  
One Park Central  
1515 Arapahoe Street  
Denver, Colorado 80202

A description of the equipment covered by the documents follows:

Two (2) 1986 Utility Model VS2R Tar Van 40' Trailers, S/N's 1UY VS2409 GC5184-01 & 1UY VS2400 GC5184-02 w/two (2) Carrier Model NEE-400 Refrigeration units w/DGBL undermount generator sets, S/N's C86070201 & C86070200, & C86070194 & C86070198; four (4) Utility Model VS2R 46' Third Stage Trident Trailers, S/N's 1UY VS2467 GC5185-01, 1UY VS2469 GC5185-02, 1UY VS2460 GC 5185-03 & 1UY VS2462 GC5185-04 w/four (4) Carrier Model NEE-400 Refrigeration units w/UDGL5N20 undermount generator sets, S/N's C86070199, C86070202, C86070203 & C86070204.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for the recordation to:

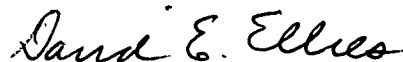
Whirlpool Leasing Services, Inc.  
17177 N. Laurel Park Dr., Suite 233  
Livonia, Michigan 48152

Ms. Noreta McGee, Acting Secretary  
Interstate Commerce Commission  
July 15, 1986  
Page 2

A short summary of the documents to appear in the index follows:

Master Equipment Lease Agreement dated May 20, 1986; Declarations to the  
Master Equipment Lease Agreement which is dated July 2, 1986.

Very truly yours,

A handwritten signature in cursive script that reads "David E. Ellies".

David E. Ellies  
Senior Lease Officer

DEE/slb

Enclosures

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

7/21/86

David E. Ellies  
Senior Lease Officer  
Whirlpool Leasing Services, Inc.  
17177 N. Laurel Park Dr., Suite 233  
Livonia, Michigan 48152

Dear  
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/18/86 at 3:20pm, and assigned re-recording number(s) 15001 & 15001-A

Sincerely yours,

*Noreta R. McGee*

Enclosure(s)

SE-30  
(7/79)

JUL 18 1986 -3 20 PM

Lease #02716

INTERSTATE COMMERCE COMMISSION  
MASTER EQUIPMENT LEASE AGREEMENT

THIS MASTER EQUIPMENT LEASE AGREEMENT, as hereinafter defined, made and entered into by Whirlpool Leasing Services, Inc. (hereinafter the "Lessor") and the individual or entity hereinafter identified as the "Lessee".

Section 1. Definitions; Declaration of Intent to Lease;

Delivery and Acceptance of Items in Declarations.

A. As used herein the following definitions shall apply:

- (i) Lessee means The Denver and Rio Grande Western Railroad Company, whose address is One Park Central, 1515 Arapahoe St., Denver, Colorado 80202, and, if incorporated, the state of incorporation is Delaware.
- (ii) Master Equipment Lease Agreement shall mean this agreement and any other schedules or exhibits referred to herein or incorporated by reference or otherwise attached to this document, whether executed contemporaneously herewith, or prior to, or subsequent to the date of execution and shall be referred to herein also from time to time as the "Lease", "Agreement" and/or "Lease Agreement".
- (iii) Equipment shall mean the equipment which shall be subject to the term of this Lease as identified on the schedules and/or exhibits attached hereto or referenced herein or otherwise incorporated by reference, and when used to refer to an individual piece of Equipment such item shall be referred to as "Item" or "Item of Equipment".
- (iv) Declaration shall mean and include that document signed by the Lessee and accepted by the Lessor which incorporates by reference the terms and conditions of this Lease and which shall otherwise set forth in detail the rental related to the Items of Equipment referenced in such Declaration, including, but not limited to, such terms and conditions which are not specifically set forth in the Lease such as the term of the Lease as applied to the Item of Equipment, the commencement and termination date of such term and any purchase or renewal options which may be contemplated. It is anticipated that such Declarations shall be appended to this Lease, but, if not appended, such Declarations shall nonetheless be valid upon acceptance thereof by the Lessor who shall have the power to append any such Declarations to this Lease. There may be one or more Declarations attached to each Lease.

- (v) The remaining terms as used herein shall have the meaning prescribed thereto by the Uniform Commercial Code for the State of Michigan or such other definition as shall be indicated herein.

B. The Lessor agrees to lease to the Lessee each Item of Equipment listed in the Declaration and the Lessee agrees to lease each such Item of Equipment from Lessor for the rental specified in the Declaration attached hereto relating to such Item of Equipment and subject to the terms and conditions set forth herein and in the Declaration.

C. Lessee will select the type, quantity and supplier of each Item of Equipment described in the appropriate Declaration and in reliance thereon such Equipment will then be ordered by Lessor from the supplier. Lessee at its expense will pay all transportation, packing, taxes, duties, installation and other charges in connection with delivery, installation and use of the Equipment.

D. The Lessee shall inspect each Item of Equipment upon its arrival and within two (2) days thereafter give the Lessor written notice either accepting or rejecting such Item. The acceptance by the Lessee shall be in substantially the form of the Certificate of Acceptance attached hereto. Said Certificate of Acceptance acknowledges receipt by the Lessee of the Equipment in good condition and working order and as satisfactory in all respects for the purposes of this Lease, contains an approval of the invoice of the supplier and a request for the Lessor to pay the invoiced amount. Any rejection by the Lessee shall specify any defect in or other objection to any Item of Equipment. In such case, the Lessee shall upon Lessor's demand, pay Lessor any amounts previously paid by the Lessor with respect to the rejected Item of Equipment and upon such payment the Lessee shall be subrogated to the Lessor's claims, if any, against the manufacturer and/or supplier thereof. Any rejection or refusal of acceptance of any Item of Equipment by the Lessee shall relieve the Lessor of any obligation or liability to the manufacturer and/or supplier thereof and such obligation or liability shall become that of the Lessee. No defect or unfitness of any Item of Equipment shall relieve the Lessee of the obligation to pay rent or any other obligation under this Lease and the appropriate Declaration except as expressly provided herein.

## Section 2. Term and Rental.

A. The term of this Lease with respect to any Item of Equipment shall commence on its date of acceptance, as set forth in the Certificate of Acceptance executed and delivered with respect thereto. The term of this Lease with respect to any Item of Equipment shall end, unless earlier terminated in accordance with the provisions of this Lease if applicable, at the expiration of the term specified in the Declarations.

B. Lessee shall pay to Lessor rent for the use of each Item of Equipment (herein "Rental") in the amounts and at the times specified in the Declarations.

C. In the event any Rental or other amount payable hereunder shall not be paid within ten (10) days when due, Lessee shall pay to Lessor, as additional charges, an amount equal to seven (7%) percent of such overdue payment, which shall be defined as "Additional Rental".

D. All payments provided for in this Lease to be made to Lessor shall be made to Lessor at the address indicated herein or at such other place as Lessor shall specify in writing.

E. It being the intention of the parties hereto that the Rental and Additional Rental payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. This Lease is a net lease and Lessee shall not be entitled to any abatement of Rental, Additional Rental or other charges payable hereunder by Lessee or withholding thereof from the Lessor or any reduction thereof, for such matters including, but not limited to, abatements or reductions due to any present or future claims of Lessee against Lessor or any assignee under this Lease or otherwise, or against the manufacturer, vendor or dealer of the Equipment; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be affected, by reason of any defect in, or damage to, or loss or destruction of all or any of the Equipment from whatever cause, the interference with use by any private person, corporation or governmental authority, the invalidity, unenforceability or lack of due authorization of this Lease or lack of right, power or authority of Lessor to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding.

### Section 3. Expiration or Termination, Purchase and Return of Equipment.

A. Upon the expiration or termination of the term of this Lease with respect to any Item or Items of Equipment, Lessee, at its own expense, will return any such Items of Equipment to Lessor at its principal place of business in Michigan, or such other locations as Lessor may designate in writing to Lessee within ten (10) days of expiration or termination, no further removed from the location of any such Items of Equipment than Lessor's principal place of business in Michigan; and at such time, the Lessee shall return any such Items of Equipment free and clear of all liens, security interests, encumbrances and rights of others, other than those referred to in Section 6 hereof, and in as good condition as when delivered to Lessee hereunder, ordinary wear and tear excepted.

B. Provided no Event of Default, as that term is hereinafter defined in Section 14.A hereof, shall have occurred and then be continuing, Lessee may elect, by giving not less than ninety (90) days' prior written notice to Lessor, to purchase at the end of the Lease term or any renewal term applicable to such Items of Equipment and having made such election Lessee shall so purchase from Lessor all but not less than all of such Items of Equipment by paying to Lessor on the last day of such term an amount equal to the then "Fair Market Value" as hereinafter defined of such Items of Equipment. The Lessee shall

enter into such contracts for sale as required by Lessor and Lessor shall be required only to warrant ownership of such Items of Equipment.

The Fair Market Value of the Equipment shall be the value upon which a willing seller and a willing buyer would agree, each respectively under no compulsion to buy or sell. The Fair Market Value is to be determined by agreement between Lessor and Lessee, and if they cannot agree then by an independent appraiser selected by Lessor but acceptable to Lessee. The cost of any such appraisal shall be borne equally by Lessor and Lessee.

#### Section 4. Authorization.

Prior to delivery to Lessee and its use of any Item of Equipment, Lessee shall supply the following at its cost, in form and substance satisfactory to Lessor:

A. Detailed description, including serial numbers, of all Items of Equipment which Lessee proposes to lease hereunder, certified by an officer, partner, or owner of Lessee.

B. Evidence satisfactory to Lessor as to due compliance with the self insurance provisions of Section 11 hereof.

C. A completed and signed Declarations statement, financing statement, a waiver of lien and consent to installation by the landlord of the location, and any other appropriate documents including titles as determined by Lessor.

#### Section 5. Representations and Warranties.

A. Lessor's Representations and Warranties. Lessor warrants that it has received whatever title was conveyed to Lessor by Lessor's predecessor in title to such Equipment. Lessor further warrants that during the term of the Lease, if no Event of Default has occurred, Lessee's use of the Equipment shall not be interrupted by Lessor or anyone claiming solely through or under Lessor.

The warranties set forth in the preceding paragraph are in lieu of all other warranties of Lessor, whether written, oral or implied; and Lessor shall not, by virtue of having leased or delivered any bill or bills of sale pursuant to this Lease, or for any other reason, be deemed to have made any other warranties or representations. LESSOR HEREBY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESSED OR IMPLIED. AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT AS IS WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, (A) THE DESIGN, PERFORMANCE, SPECIFICATIONS OR CONDITION OF THE ITEM OR ITEMS OF EQUIPMENT, (B) THE MERCHANTABILITY THEREOF, (C) THE FITNESS FOR ANY PARTICULAR PURPOSE THEREOF, (D) THE LESSOR'S TITLE THERETO, (E) INTERFERENCE BY ANY PARTY OTHER THAN LESSOR WITH THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (F) THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR CONFORMITY THEREOF TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, IT BEING AGREED THAT ALL SUCH RISKS AS BETWEEN THE LESSOR AND THE LESSEE ARE TO BE BORNE BY THE LESSEE.

The Lessor hereby authorizes the Lessee, at Lessee's expense, to assert for Lessor's account, during the term of this Lease, all of Lessor's rights under any manufacturer's, vendor's or dealer's warranty on the Equipment to the extent permitted by law and agreement, and Lessor agrees to cooperate with Lessee in asserting such rights; provided, however, that Lessee shall indemnify and hold harmless Lessor from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by lessor in connection therewith, as a result of, or incident to, any action by Lessee pursuant to the above authorization. Any amount received by Lessor and Lessee as payment under any warranty pursuant to the above authorization shall be applied to restore the Equipment to as good a condition as it was or should have been (but for defects giving rise to such payment under warranty) when delivered to Lessee hereunder, ordinary wear and tear excepted, with the balance of such amount, if any, to be paid over to Lessee.

Under no circumstances will the Lessor be responsible for special or consequential damages in connection with its obligations or performance under this Agreement, nor shall any third party have any right to any claim against Lessor arising out of or in connection with any of the Equipment or the use or disposition thereof.

B. Lessee's Representations and Warranties. Lessee represents and warrants that:

- (i) Lessee, if a corporation, is a corporation duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business in those jurisdictions (including those where the Equipment will be located) where such qualification is necessary to authorize Lessee to carry on its present business and operations;
- (ii) Lessee has full power, authority and legal right to execute, deliver and perform the terms of the Lease. This Lease has been duly authorized by all necessary corporate action on the part of the Lessee, does not require any stockholder approval, does not require the approval of, or the giving of notice to, any federal, state, local or foreign governmental authority and does not contravene any law binding on Lessee or contravene Lessee's certificate or articles of incorporation or by-laws or any indenture, credit agreement or other agreement to which Lessee is a party or by which it is bound;
- (iii) This Lease constitutes a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms;
- (iv) There are no pending or threatened actions or proceedings before any court, administrative agency or other tribunal or body or judgments which may materially adversely affect Lessee's financial condition or operations;
- (v) The Equipment is personal property and is not now nor will it become either real property or a fixture or inventory;



- (vi) The balance sheet of Lessee for its most recent fiscal year and the related earnings statement of Lessee for such fiscal year have been furnished to Lessor and fairly present Lessee's financial condition as of such date and the results of its operations for such year, in accordance with generally accepted accounting principles consistently applied, and since such date there has been no material adverse change in such conditions or operations;
- (vii) The Lease application (if any) and Financial Statements of the principals (if any) of the Lessee are true and are not misleading;
- (viii) The execution of this Agreement does not constitute a default in any other agreement;
- (ix) There are no liens or security interests with respect to the Equipment except those in favor of the Lessor;
- (x) The Equipment is of size design, capacity and manufacture selected by Lessee and will be suitable for Lessee's purposes;
- (xi) Lessor is not a manufacturer thereof nor a dealer in property of the kind of the Equipment;
- (xii) The Lessee will cause to be done, executed, acknowledged and delivered all and every such reasonable acts, conveyances and assurances as the Lessor shall require for accomplishing the purposes of this Lease Agreement. The Lessee, forthwith upon delivery of the Equipment under this Lease Agreement shall cause said Equipment to be duly registered, and at all times thereafter to remain duly registered, in the name of the Lessor, or at Lessor's request shall furnish to the Lessor such information as may be required to enable the Lessor to make application for such registration, and shall promptly furnish to the Lessor such information as may be required to enable the Lessor timely to file any reports required to be filed by it as the Lessor under the Lease or as the owner of the Equipment with any governmental authority;
- (xiii) The Lessee shall not sublease any of the Items of Equipment without obtaining the prior written consent of Lessor to such sublease and that any sublessee shall assume the obligations of Lessee hereunder which assumption shall not in any way relieve Lessee of its obligations hereunder.

- (xiv) Each Item of Equipment constitutes or will constitute "new Section 38 property" in the hands of Lessor within the meaning of Section 48(b) of the Code, each Item of Equipment is includable within the Asset Guideline Class and has an "as set guideline period" within the meaning of Rev. Proc. 77-10 (i.e., an Asset Depreciation Range Midpoint) as set forth in the Declarations, Lessor shall be entitled to the investment tax credit provided under Section 38 and related sections of the Code at the rate of 10% based on 100% of the Lessor's Cost of the Equipment as set forth in the Declarations, and Lessor shall be entitled to the deductions permitted under the Accelerated Cost Recovery System set forth in Section 168 of the Code for each Item of Equipment based on the class of property of each Item as set forth in the Declarations.

#### Section 6. Mortgages, Liens and Other Encumbrances.

Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, title thereto or any interest therein (and Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such mortgage, security interest, pledge, lien, charge, encumbrance or claim) except (a) the respective rights of Lessor and Lessee as herein provided, (b) liens or encumbrances which result from claims against Lessor except to the extent that such liens and encumbrances arise from failure of Lessee to perform any of Lessee's obligations hereunder, and (c) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings.

#### Section 7. Taxes.

LESSEE AGREES TO PAY AND TO INDEMNIFY AND HOLD LESSOR HARMLESS FROM ALL SALES, USE, PERSONAL PROPERTY, LEASING, LEASING USE, STAMP OR OTHER TAXES, LEVIES, IMPOSTS, DUTIES, CHARGES, FEES OR WITHHOLDINGS OF ANY NATURE (TOGETHER WITH ANY PENALTIES, FINES OR INTEREST THEREON) IMPOSED AGAINST LESSOR, LESSEE OR THE EQUIPMENT BY ANY FEDERAL, STATE, LOCAL OR FOREIGN GOVERNMENT OR TAXING AUTHORITY UPON OR WITH RESPECT TO THE EQUIPMENT OR UPON THE PURCHASE, OWNERSHIP, DELIVERY, LEASING, POSSESSION, USE, OPERATION, RETURN OR OTHER DISPOSITION THEREOF, OR UPON THE RENTALS, RECEIPTS OR EARNINGS ARISING THEREFROM, OR UPON OR WITH RESPECT TO THIS LEASE (EXCLUDING, HOWEVER, FEDERAL, STATE AND LOCAL TAXES ON, OR MEASURED BY, THE NET INCOME OF LESSOR) UNLESS, AND TO THE EXTENT ONLY, THAT ANY SUCH TAX, LEVY, IMPOST, DUTY, CHARGE, OR WITHHOLDING IS BEING CONTESTED BY LESSEE IN GOOD FAITH AND BY APPROPRIATE PROCEEDINGS. In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor, or will notify Lessor of such requirement and make such report or return in such manner as shall be satisfactory to Lessor. Lessor agrees to cooperate fully with Lessee in the preparation of any such reports or returns. Lessor is hereby authorized to submit any report or other information relating to the Equipment or the Lease to any governmental authority so requesting but in no event shall Lessor be obligated to do so.

Section 8. Title; Use, Maintenance and Operation; Identification Marking.

A. The Lessor as between the Lessor and the Lessee shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and for the possession and use thereof by the Lessee.

B. Lessee agrees that the Equipment will be used solely in the conduct of its business. The Lessee further agrees to comply in all material respects with all applicable governmental laws, regulations, requirements and rules with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance on any such Item of Equipment shall be required to be changed or replaced or in case any additional or other equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own cost. Lessee agrees that each Item of Equipment (except Items which prior to the execution of this Lease Lessee shall have advised Lessor in writing are normally used or to be used in more than one location) will be kept at the address shown in the Declarations with respect to such Item unless the Lessor shall first otherwise consent in writing. Lessee will immediately give written notice to the Lessor of any change in its principal place of business. If any Item shall be of a type normally used in more than one (1) state, whether or not actually so used, Lessee will give prompt written notice to Lessor of any use of such Item at any location other than one at which the Lessee shall have previously advised the Lessor such Item will be used. The Lessee will not use any of the Equipment outside the territorial limits of the United States unless the Lessor shall first so agree in writing.

Lessee, at its own cost and expense, will repair and maintain the Equipment so as to keep it in as good condition as when delivered to Lessee hereunder, ordinary wear and tear excepted. Lessee may from time to time add further parts or accessories to any Item of Equipment provided that such addition does not impair the value, utility, or warranties of such Item of Equipment; and any parts or accessories so added, if not required by Section 10 below to be added as a replacement, shall remain the property of Lessee or other owner thereof and may be removed by Lessee at any time prior to the expiration of the term of the Lease with respect to such Item or Items of Equipment, provided such removal does not impair the value or utility of such Items of Equipment and no Event of Default hereunder shall then occur and be continuing. Any parts or accessories not removed within a reasonable time after the expiration of the Lease with respect to such Item of Equipment shall become the property of Lessor. Lessee will not commit, or permit to remain uncorrected, any act or condition which invalidates or adversely affects any duties owed by the vendor on the Equipment.

C. Lessee agrees at its own cost and expense to place such markings, plates, or other identification on Items of Equipment showing Lessor's title thereto as Lessor may from time to time request, provided such identification markings are placed so as not to interfere with the usefulness of the said Equipment. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership. The Lessee shall indemnify the Lessor and any third party dealing with Lessor against any liability, loss or expense incurred by it or any third party dealing with Lessor as a result of any act or omission of the Lessee which is inconsistent with the provisions of this paragraph.

## Section 9. Inspection.

Upon the request of Lessor, Lessee shall advise Lessor as to the location of each Item of Equipment and shall, at any reasonable time, make the Equipment available to Lessor or Lessor's agent for inspection at the place where it is ordinarily located, and shall make Lessee's records pertaining to the Equipment available for the Lessor's inspection. During any such inspection, Lessor or Lessor's agent will be permitted to copy or make extracts from any and all books, records, documents in the possession of the Lessee relating to the Equipment and performance in this Lease. Lessor shall have no duty to make any such inspection or examination and shall not incur any liability or obligation by reason of not making any such inspection or examination.

## Section 10. Loss or Destruction.

A. In the event any Item of Equipment shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever (hereinafter "Event of Loss"), Lessee shall promptly, but in any event within ten (10) days of the Event of Loss, give written notification to Lessor of said loss and of the facts pertaining thereto. In addition, within ten (10) days of the Event of Loss Lessee shall elect to either (1) replace such Item of Equipment at Lessee's own cost and expense as provided in Section 10.B. hereof, or (2) pay to Lessor the Casualty Value of the Item as hereinafter defined as provided in Section 10.C. hereof. Notification of Lessee's election shall be tendered in writing by Lessee to Lessor within ten (10) days of the Event of Loss. The term "Casualty Value" shall mean the value of the destroyed or lost Item as computed on the Casualty Value Schedule attached hereto or to the Declaration relating to such Item.

B. Should Lessee elect to replace such Item, any replacement item shall be free and clear of all liens, encumbrances and rights of others and shall be in as good condition, and shall have a value and utility determined by the Lessor to be at least equal to the replaced Item, as if such Item were in the condition and repair required to be maintained by the terms hereof. All such replacement Items shall become the property of Lessor and shall immediately become subject to this Lease, and shall be deemed part of the Equipment for all purposes hereof, to the same extent as the property originally comprising the Equipment; whereupon such replaced Item of Equipment shall no longer be deemed part of the Equipment leased hereunder, and Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest, if any, therein. In the event Lessee elects to replace such Item of Equipment, Lessee's obligation to pay Rental as set forth in this Lease shall remain unchanged. Lessee further agrees to execute such documents as deemed necessary by the Lessor to include such replacement Items in this Lease.

C. Should Lessee elect not to replace such Item of Equipment, then Lessee shall pay to Lessor, on the next Rental payment date for such Item following such Event of Loss, the Casualty Value as of such date of such lost or destroyed Item. The obligation of Lessee to pay Rental with respect to such Item (including the installment due on such next Rental payment date) shall continue undiminished until the payment of such Casualty Value. After the payment of such Casualty Value, Lessee's obligation to pay Rental for such Item shall cease, but Lessee's obligation to pay Rental for all other Items of Equipment shall remain unchanged. After the payment of such Casualty Value, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title, and interest, if any, in and to such lost or destroyed Item of Equipment.

## Section 11. Insurance.

At its own expense, Lessee shall self insure on each Item of Equipment for the full insurable value of such Item, and shall self insure for adequate comprehensive general public liability and property damage with respect to each Item, said self insurance to be in an amount not less than the amount specified in the Declaration and, in any event, in an amount sufficient to provide full coverage against all loss and liability. As between Lessor and Lessee, it is agreed that if Lessee elects to replace the Item or Items so lost or destroyed under the Provisions of Section 10 hereof, proceeds will be applied in payment for repairs and replacement property required pursuant to Sections 8 and 10 hereof.

## Section 12. Indemnification and Expenses.

A. The Lessee shall defend, indemnify and save harmless the Lessor or any assignee or transferee of Lessor as set forth herein and their respective agents and servants from and against any claim, cause of action, damages, liability, cost, fee or expense (including counsel fees and costs in connection therewith) which may reasonably be incurred in any manner by or for the account of any of them (1) relating to the Equipment or any part thereof including without limitation the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (2) by reason or as the result of any act or omission of the Lessee for itself or its agent, or (3) based on any event which results in any claim for negligence or strict liability in tort. This Section shall remain in effect notwithstanding the expiration or other termination of this Lease with respect to any one or more Items of Equipment insofar as it relates to an event which occurred prior to such expiration or termination. Lessee agrees to give Lessor prompt notice of any claim or liability hereby indemnified against. Subject to the above, the Lessor agrees to cooperate with the Lessee in any defense or other action which the Lessee is by this Section obligated to undertake.

B. If by reason of any act or omission of Lessee, misrepresentation by Lessee of any of the warranties and representations contained herein, including any amendments, riders or exhibits hereto, or by reason of any statutory or regulatory provision enacted or adopted after the date hereof, Lessor shall lose or shall not have, or shall lose the right to claim, or there shall be disallowed or recaptured, all or any portion of Federal income tax depreciation deductions with respect to the Equipment, based on the depreciation of Lessor's basis of the Equipment over the period or periods initially selected by Lessor as the life or lives of the Equipment, using any depreciation method which Lessor elects to use under Federal income tax law and applicable regulations and which Lessor in its complete discretion may select, then Lessee will pay Lessor, as supplemental rent hereunder, with respect to each taxable year of Lessor, (i) a sum which, after deduction of all taxes required to be paid by Lessor with respect to the receipt of such sum under the laws of any Federal, state or local government or taxing authority in the United States, shall be equal to the amount of any additional Federal income taxes required to be paid with respect to such year by reason of such loss, disallowance or recapture of depreciation deduction (net of any savings in Federal income taxes required to be paid with respect to such year by reason of Lessor not being required to include in its Federal gross income for the relevant period the Rental paid

under this Lease or being required to so include only a portion thereof as interest) plus (ii) the amount of interest and penalties which may be payable to any such taxing authority by Lessor in connection with such loss, disallowance or recapture. Such payment shall be made to Lessor by Lessee on demand at any time after such additional income taxes are payable.

C. If by reason of any act or omission of Lessee, misrepresentation by Lessee of any of the warranties and representations contained herein, including any amendments, riders or exhibits hereto, or by reason of any statutory or regulatory provision enacted or adopted after the date hereof, Lessor shall not have or shall lose the right to claim or there shall be disallowed or recaptured, all or any portion of the full ten (10%) percent or other percentages or amount of investment credit provided for in Section 38 of the Internal Revenue Code of 1954, as amended (or any successor provision thereto), with respect to the Equipment, then Lessee will pay Lessor, on demand, an amount which, after deduction of all taxes required to be paid by Lessor with respect to the receipt thereof under the laws of any Federal, state or local government or taxing authority in the United States, shall be equal to the amount of such investment credit so lost, disallowed or recaptured or which may not be claimed, and as a further supplemental rent hereunder Lessee will pay Lessor the amount of any interest and penalties payable by Lessor in connection with the loss, disallowance or recapture of such investment credit or the right to claim the same. Such payment shall be made to Lessor by Lessee on demand at any time after such additional income taxes are payable.

D. Lessee shall not be required to pay Lessor the amount provided for in Paragraphs B and C above if the loss, disallowance, or recapture of depreciation deductions and/or investment credit or the right to claim the same shall result solely because of the occurrence of any of the following events:

- (i) Lessee is required by the terms hereof to pay and shall have paid the Casualty Value; or,
- (ii) Lessor shall fail to claim such depreciation deduction or investment credit in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming such depreciation deduction or investment credit, and such failure to claim or to follow such procedure, as the case may be, shall preclude Lessor from claiming such depreciation deduction or investment credit; or,
- (iii) Lessor shall, at any time where no Event of Default has occurred and is continuing, without the written consent of Lessee, voluntarily transfer legal title to such Equipment to anyone and such transfer by Lessor shall be the direct cause of such loss.

E. Lessor agrees to notify Lessee promptly of any claim made by the Internal Revenue Service against Lessor in respect to the disallowance of such depreciation deductions or investment credit which relates to information which may be particularly within the knowledge of Lessor. Lessor further agrees that, should all or any portion of the said depreciation deductions or investment credit be disallowed as aforesaid, Lessor will contest the disallowance, if so requested by Lessee in writing at least five (5) working days prior to the last date allowed for filing notice of such contest, provided that Lessee makes

adequate provision for Lessor's indemnification and the payment of all of Lessor's expenses, including actual legal fees, in connection therewith.

F. It is expressly understood and agreed that the income of Lessor may be reported to any taxing authority with other entities on a consolidated income tax return if Lessor so elects and that the computations required by Paragraphs B and C above may be made on the basis of such consolidated returns if Lessor so elects.

G. Lessee expressly agrees that Lessor may assign or otherwise transfer all or any portion of its title to the Equipment and its rights under this Section 12 to a third party pursuant to this Lease Agreement herein referred to, including, but not limited to, Lessor's rights to claim depreciation and the investment tax credit hereinabove described. Lessee, by execution of this Lease Agreement, expressly consents to any said assignment or other transfer of Lessor's interest and rights made pursuant to this Lease Agreement herein referred to. Lessee further covenants that said third party shall have all the rights against Lessee granted to Lessor by Lessee in this Section 12.

#### Section 13. Assignment.

Lessor may at any time, with or without notice to Lessee, transfer, assign or grant a security interest in this Lease or any Equipment or any Rental or other sums due or to become due hereunder, and in such event Lessor's transferee or assignee shall have all of Lessor's rights, powers, privileges and remedies hereunder. No such assignee or transferee shall be obligated to perform any duty, covenant or conditions required to be observed or performed by Lessor, and no such transferee or assignee shall be bound by, or obligated to perform or see to the performance of, any warranty, express or implied, made by Lessor, but each and all of such covenants and agreements of Lessor provided for herein and all representations and warranties shall survive any such transfer or assignment of this Lease and shall be and remain the sole liability of Lessor.

#### Section 14. Events of Default; Remedies.

A. The following events shall constitute Events of Default:

- (i) Lessee shall fail to make any Rental payment hereunder when due, or,
- (ii) Lessee shall fail to make any payment other than Rental required hereunder or shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under this Lease; or,
- (iii) Any representation or warranty made by Lessee under this Lease or any supplement, amendment, or addition thereto, or in any document or certificate furnished Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect; or,

- (iv) Lessee shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for Lessee or for a substantial part of its property without its consent and shall not be dismissed within a period of sixty (60) days; or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Lessee and, if instituted against Lessee, shall not be dismissed for a period of sixty (60) days; or,
- (v) Judgments aggregating more than One Thousand and no/100 (\$1,000.00) Dollars shall be entered against Lessee and shall not be satisfied or appealed from and execution thereon stayed within the time limited by law for taking appeals as of right or if any Item of Equipment or a substantial part of its property shall become subject to a judicial lien and not released by bond or otherwise; or,
- (vi) The Lessor in good faith considers that the prospect of payment or performance of the Lessee's obligations under this lease has been impaired.

B. Upon the happening of an Event of Default, the Lessor shall, if Lessee fails to cure any such breach within ten (10) days after receipt of written notice from Lessor, be entitled to:

- (i) proceed by appropriate court action or actions to enforce performance by the Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof;
- (ii) repossess any or all Items of Equipment without prejudice to any remedy or claim hereinafter referred to, and for this purpose enter upon the premises of the Lessee and peaceably remove, without liability for suit, action or other proceeding by Lessee, any or all Items of Equipment;
- (iii) declare all unpaid Rentals immediately due and payable;
- (iv) terminate the Lease without prejudice to Lessor's rights in respect to obligations then accrued and remaining unsatisfied as well as the remedies and claims referred to herein;
- (v) elect to sell any or all Items of Equipment at one or more public or private sales and recover from the Lessee as liquidated damages for the Lessee's default hereunder an amount equal to the amount, if any, by which (a) the sum of (i) the aggregate Casualty Value of such Items of Equipment on the date such sale is consummated, (ii) all rent owing or accrued hereunder to and including the date such sale is consummated, (iii) all costs and expenses (including sales tax) reasonably incurred in searching for, taking, removing, keeping, storing, repairing, restoring and selling such Items of Equipment, (iv) all other amounts owing by the Lessee



hereunder, whether as Additional Rent, indemnification or otherwise, and (v) all reasonable costs and expenses, including (without limitation) legal fees and expenses incurred by the Lessor as a result of the Lessee's default hereunder, exceeds (b) the amount received by the Lessor upon such public or private sales of such Items of Equipment;

- (vi) elect to release any or all Items of Equipment after giving statutory notice to Lessee if required by law, pursuant to one or more leases on such terms and conditions as Lessor and such subsequent lessee of the Items shall have agreed and recover from the Lessee as liquidated damages for the Lessee's default hereunder an amount equal to the amount if any, by which (a) the sum of (i) the aggregate Casualty Value of such Items of Equipment on the date such lease is consummated, (ii) all rent owing or accrued hereunder to and including the date such lease is consummated, (iii) all costs and expenses reasonably incurred in searching for, taking, removing, keeping, storing, repairing, restoring and leasing such Items of Equipment, (iv) all other amounts owing by the Lessee hereunder, whether as Additional Rent, indemnification or otherwise, and (v) all reasonable costs and expenses, including (without limitation) legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder, exceeds (b) the aggregate Rentals to be received by Lessor over the term or terms of such release of the Items from such subsequent lessee or lessees discounted by an amount equal to five (5%) percent per annum;
- (vii) upon demand made to the Lessee, receive prompt payment from Lessee of an amount equal to the aggregate Casualty Value on the Rental payment date next preceding the date such demand is made of all Items of Equipment which have not been sold by the Lessor pursuant to clause (v) above plus, to the extent not otherwise recovered from the Lessee pursuant to said clause (v) above, (i) any Rent owing or accrued hereunder to and including the date such notice is given, (ii) all costs and expenses reasonably incurred in searching for, taking, removing, keeping, storing, repairing and restoring such Items of Equipment, (iii) all other amounts owing by the Lessee hereunder, whether as Additional Rent, indemnification or otherwise, and (iv) all reasonable costs and expenses, including without limitation legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder; provided that upon receipt of payment in full of such amount, the Lessor shall tender to the Lessee a bill of sale for the Items of Equipment then subject to this Lease without any warranties or representations regarding or relating to the Items for which the bill of sale is tendered; or
- (viii) avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity or in bankruptcy or insolvency proceedings.

In addition, Lessee shall be liable for any and all reasonable expenses and charges hereunder, including (without limitation) attorneys' fees, incurred by reason of any late payment, Event of Default, or the exercise of Lessor's remedies with respect thereto.

C. THE REMEDIES IN THIS LEASE PROVIDED IN FAVOR OF LESSOR SHALL NOT BE DEEMED EXCLUSIVE, BUT SHALL BE CUMULATIVE AND SHALL BE IN ADDITION TO ALL OTHER REMEDIES IN ITS FAVOR EXISTING AT LAW OR IN EQUITY. LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW. LESSEE HEREBY WAIVES ANY AND ALL EXISTING OR FUTURE CLAIMS OF ANY RIGHT TO ASSERT ANY OFF-SET AGAINST THE PAYMENTS DUE HEREUNDER, AND AGREES TO MAKE THE PAYMENTS REGARDLESS OF ANY OFF-SET OR CLAIM WHICH MAY BE ASSERTED BY LESSEE ON ITS BEHALF IN CONNECTION WITH THE LEASE OF THE EQUIPMENT.

Section 15. Lessor's Right to Perform for Lessee.

If Lessee fails to make payments required by this Lease, including rental payments, or fails to perform or comply with any of its agreements contained herein, Lessor may itself but shall not be required to, make payment or perform or comply with such agreement, and the Rental payments in default and the amount of the reasonable expenses of Lessor incurred in connection with such payment, performance of or compliance with such agreements shall be payable by Lessee to Lessor upon demand together with interest at the rate of eighteen (18%) percent, per annum or the highest lawful rate, whichever is less, from the date of the default in the Rental or the date that the expense was incurred to the date of payment by Lessee to Lessor and any legal fees incurred by Lessor therewith.

Section 16. Further Assurances; Financial Information.

Upon Lessor's written request, Lessee agrees to furnish Lessor:

A. The annual report containing a balance sheet, income statement and statement of sources and uses of funds filed with the Interstate Commerce Commission within one hundred twenty (120) days after the close of each fiscal year of Lessee occurring after the date of Lease;

B. Balance sheets as of the end of each quarterly period of Lessee's fiscal years, and income statements filed with the Interstate Commerce Commission within sixty (60) days after the close of each such quarterly period.

Section 17. Notices.

All notices required under the terms and provisions hereof shall be in writing, and any such notice shall become effective when deposited in the United States mail, with proper postage for certified mail prepaid, addressed to the address shown herein or to such other address as such party shall from time to time designate for itself in writing to the other party.

Section 18. Multiple Lessees.

If there is more than one Lessee named in this Lease, the liability of each shall be joint and several.

Section 19. Effect of Invalid Provision.

Any provision of this Lease which may be determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

Section 20. Modification of Lease Agreement.

No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

Section 21. Lease Agreement; Title.

This Lease shall constitute an agreement of Lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in or to the Equipment except as a Lessee only.

Section 22. Appointment of Agent of Lessor.

Lessor shall have the right, at any time during the term of this Lease, to appoint any party selected by it to act as agent or trustee for it hereunder.

Section 23. Headings.

The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 24. Applicable Law.

This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan, including all matters of construction, validity and performance.

Section 25. Effective Date.

This Lease and other documents and agreements executed pursuant to it are not effective until they have been signed and accepted by Lessor and its offices within the State of Michigan.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed on behalf of each of them on this 20th day of May, 1986, and the signatories warrant their authority to bind their principals.

The Denver and Rio Grande Western  
Railroad Company  
a Delaware corporation,

Whirlpool Leasing Services, Inc.  
a Delaware corporation,

By: 

By:   
David E. Ellies

Its: \_\_\_\_\_

Its: Senior Lease Officer

Address:

One Park Central  
1515 Arapahoe Street  
Denver, Colorado 80202

17177 North Laurel Park Drive  
Suite 233  
Livonia, Michigan 48152

CORPORATE FORM OF ACKNOWLEDGEMENT

State of COLORADO )  
City \_\_\_\_\_ ) ss  
County of DENVER )

On this 3rd day of July, 1986, before me personally appeared  
L. R. Parsons to me personally known, who being by me duly  
sworn, says that he is the Vice President-Operations  
of The Denver and Rio Grande Western RR Co., that the seal affixed to the  
foregoing instrument is the corporate seal of said corporation, that said  
instrument was signed and sealed on behalf of said corporation, that said  
instrument was signed and sealed on behalf of said corporation by authority of  
its Board of Directors, and he acknowledged that the execution of the foregoing  
instrument was the free act and deed of said corporation.

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My Commission Expires Feb. 14, 1987